

EXHIBIT 2

PART 1

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
4

5 PATRICK BAILEY,)
6)
7 Plaintiff,)
8 VS.) CASE NO:
9 MILTOPE CORPORATION,) 2:05-CV-1061-MEF-DRB
10) DEPOSITION OF:
11 Defendant.) PATRICK BAILEY

12 VOLUME 2
13

14 S T I P U L A T I O N S

15 IT IS STIPULATED AND AGREED, by and
16 between the parties through their
17 respective counsel, that the deposition
18 of:

19 PATRICK BAILEY,
20 may be taken before LeAnn Maroney, Notary
21 Public, State at Large, at the law offices
22 of Johnston, Barton, Proctor & Powell, 2900
23 AmSouth/Harbert Plaza, Birmingham, Alabama,

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<p>1 on September 29, 2006, commencing at 2 approximately 10:00 a.m.</p> <p>3</p> <p>4 IT IS FURTHER STIPULATED AND AGREED 5 that the signature to and reading of the 6 deposition by the witness is waived, the 7 deposition to have the same force and 8 effect as if full compliance had been had 9 with all laws and rules of Court relating 10 to the taking of depositions.</p> <p>11</p> <p>12 IT IS FURTHER STIPULATED AND AGREED 13 that it shall not be necessary for any 14 objections to be made by counsel to any 15 questions, except as to form or leading 16 questions, and that counsel for the parties 17 may make objections and assign grounds at 18 the time of the trial, or at the time said 19 deposition is offered in evidence, or prior 20 thereto.</p> <p>21 ***</p> <p>22</p> <p>23</p>	<p>1 EXHIBIT LIST</p> <p>2</p> <p>3 Defendant's Exhibit 11 - 265</p> <p>4 Defendant's Exhibit 12 - 266</p> <p>5 Defendant's Exhibit 13 - 298</p> <p>6 Defendant's Exhibit 14 - 315</p> <p>7 Plaintiff's Exhibit 1 - 342</p> <p>8 Plaintiff's Exhibit 2 - 351</p> <p>9 Plaintiff's Exhibit 3 - 352</p> <p>10 Plaintiff's Exhibit 4 - 354</p> <p>11 Plaintiff's Exhibit 5 - 384</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
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<p>1 APPEARANCES</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 DERRICK BLYTHE</p> <p>4 Attorney at Law</p> <p>5 126 Marshall Street</p> <p>6 Alexander City, Alabama 35010</p> <p>7</p> <p>8 FOR THE DEFENDANT:</p> <p>9 HEATHER F. LINDSAY</p> <p>10 Attorney at Law</p> <p>11 Johnston, Barton, Proctor & Powell</p> <p>12 2900 AmSouth/Harbert Plaza</p> <p>13 Birmingham, Alabama 35203</p> <p>14</p> <p>15</p> <p>16 INDEX</p> <p>17 MS. LINDSAY: 215-319; 356-385</p> <p>18 MR. BLYTHE: 319-356</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p>1 I, LeAnn Maroney, a Court</p> <p>2 Reporter of Birmingham, Alabama, and a</p> <p>3 Notary Public for the State of Alabama at</p> <p>4 Large, acting as commissioner, certify that</p> <p>5 on this date, pursuant to Rule 30 of the</p> <p>6 Alabama Rules of Civil Procedure and the</p> <p>7 foregoing stipulation of counsel, there</p> <p>8 came before me on September 29, 2006,</p> <p>9 PATRICK BAILEY, witness in the above cause,</p> <p>10 for oral examination, whereupon the</p> <p>11 following proceedings were had:</p> <p>12 PATRICK BAILEY,</p> <p>13 being first duly sworn, was examined and</p> <p>14 testified as follows:</p> <p>15 EXAMINATION BY MS. LINDSAY:</p> <p>16 Q Mr. Bailey, we meet again.</p> <p>17 Thanks for coming back. We'll just finish</p> <p>18 up this deposition. Hopefully it won't</p> <p>19 take very long.</p> <p>20 I have some reminders for you.</p> <p>21 Try to remember to say yes or no rather</p> <p>22 than uh-huh or huh-uh. You and I sometimes</p> <p>23 interrupt each other accidentally. I'll</p>

(Pages 216 to 219)

3

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1 try not to do that. If you would, try to
2 remember just to answer my question. And
3 if there's something that you haven't had a
4 chance to discuss, I'm sure your lawyer
5 will have a chance to ask you those
6 questions at the end.

7 A Okay.

8 Q I have some notes just based on
9 things I wasn't able to wrap it up last
10 time. These questions may bounce around in
11 different areas, so just bear with me.

12 A Okay.

13 Q One question I have is you
14 mentioned having a legal dispute with a
15 Mr. McCorkle and Mr. O'Brien. Do you
16 remember that?

17 A Correct.

18 Q Were y'all in the same band
19 together?

20 A No.

21 Q As I recall your testimony, the
22 dispute was over something to do with
23 music.

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1 A Correct.

2 Q Were you in bands with each one
3 of them?

4 A No.

5 Q So, you were not in a band with
6 McCorkle?

7 A No.

8 Q And you were not in a band with
9 O'Brien?

10 A No.

11 MR. BLYTHE: Off the record for
12 a second.

13 (Discussion held off the record)

14 Q Can you tell me briefly what
15 that dispute was about?

16 A Totally separate engagements.

17 They had hired a band I was in to play, and
18 they did not pay. Therefore, we had to
19 seek some sort of action to be paid.

20 Q And when you say we, which band
21 were you acting on behalf of when you asked
22 McCorkle and O'Brien to pay?

23 A Imposter.

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1 Q That was the band you were in at
2 Auburn, right?

3 A Correct.

4 Q Another follow-up question about
5 a time period other than your employment
6 with Miltope. When you were in the Rat
7 Race prior to your working at Miltope, were
8 you getting paid for your performances with
9 that band?

10 A With Rat Race?

11 Q Yes.

12 A Yes.

13 Q And I believe that this was
14 probably in the year 1995 or 1996. Is that
15 correct?

16 A It was prior to my initial
17 employment with Miltope for a little less
18 than one year. It was almost a whole year.

19 Q And this had happened right
20 after your mother passed away, correct?

21 A Correct.

22 Q Was the income you received for
23 the Rat Race performances your only source

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1 of income in that time period?

2 A Yes. I was married during that
3 time, also.

4 Q And your wife was working?

5 A Yes.

6 Q Just for clarification, when you
7 interviewed at Miltope with Mr. Ed Crowell,
8 what did you understand his title to be?

9 A I don't recall.

10 Q Do you recall Mr. Ed Crowell
11 interviewing you prior to both terms of
12 employment at Miltope?

13 A I'm not exactly sure about the
14 first term of employment. But the second
15 term of employment, I did speak to Mr.
16 Crowell.

17 Q Do you recall receiving offer
18 letters from Mr. Ed Crowell for both terms
19 of employment?

20 A I believe that's right.

21 Q Did you understand him to be the
22 one to make the decision to hire you?

23 A Yes.

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1 **Q** And was that understanding the
2 same both times you were employed at
3 Miltope, that Mr. Ed Crowell hired you both
4 times?

5 **A** I believe that to be right.

6 **Q** What did you understand Brian
7 Burkhead's position to be when you worked
8 at Miltope the second time?

9 **A** The second time, my supervisor.

10 **Q** Did you know what area he
11 supervised?

12 **A** He supervised O&R and me.

13 **Q** What does O&R stand for?

14 **A** Overhaul and repair.

15 **Q** When you say he also supervised
16 you, what area were you running?

17 **A** I was the CAV administrator and
18 the government property administrator.

19 **Q** Did you say CAV, C-A-V?

20 **A** CAV, commercial asset
21 visibility.

22 **Q** What does that mean to a regular
23 person like me?

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1 **A** I was in charge of the computer
2 system that made it possible for the Navy
3 to view their assets in Miltope's
4 possession for repair.

5 **Q** Was this a way that they could
6 keep track of the status on repair of their
7 property?

8 **A** Exactly, and also for their
9 program managers and people of that nature
10 to be able to tell in what condition each
11 piece of material was. So, if they needed
12 a certain amount, they could look and see
13 how many we had and they could put an order
14 in for that amount or know that they had
15 that many there. And they could also check
16 the status on delivery orders that we had
17 in-house.

18 **Q** When you listed your area, you
19 said CAV administrator and government
20 property, I believe.

21 **A** Right.

22 **Q** How was being over government
23 property different from what you just

Page 222

1 described?

2 **A** We had one area that was called
3 NAV IPC Mechanicsburg which was tracked in
4 CAV. That was the Navy ships. We had
5 another area that was NAV ICP Philadelphia
6 which was Navy planes. Those two were the
7 CAV items. The other items that we had
8 in-house were any and all other government
9 property, which would be Army, Air Force,
10 that kind of thing.

11 **Q** So, there were two items that
12 fell within the CAV administrator title?

13 **A** Two sections I would say would
14 be a better way to say it.

15 **Q** And that would have been the
16 Mechanicsburg and --

17 **A** Philadelphia.

18 **Q** And then there was also a
19 separate administrative duty you had with
20 respect to other government property?

21 **A** Correct.

22 **Q** Could you tell me more about
23 what that entailed for you, this separate

Page 223

1 administrative duty you had?

2 **A** I was sent to school in Ohio for
3 that. That's the IND 101 that you see on
4 there.

5 **Q** I got you.

6 **A** And I was instructed in ways to
7 maintain and store and secure government
8 property. And I was trying to implement
9 some of the things that I had learned in
10 school, which would mean that the -- some
11 certain things I had to have a security
12 clearance for. Some things I had to be
13 able to show a secure storage for and a way
14 to track them when they were in-house.

15 **Q** What type of property were you
16 having to track and store securely?

17 **A** S-3 drives.

18 **Q** What are S-3 drives?

19 **A** Can I go off the record?

20 (Discussion was held off the record.)

21 **Q** Back on the record. With
22 respect to the other government property
23 you had to track and secure securely, that

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5

Page 224

1 would have been classified information, as
2 far as you know?

3 A Yes.

4 Q What did you understand the
5 position of Gabe Riesco to be?

6 A He was the director of -- he was
7 Brian's boss. So, he would have been the
8 director of product support. And he was
9 also a program manager of a program that I
10 can't recall the name of right now. But he
11 was Brian's -- Brian reported to him.

12 Q And you reported to Brian,
13 right?

14 A Correct.

15 Q Do you know who Gabe reported
16 to?

17 A I believe he would report to --
18 I don't know if he reported directly to Ed
19 or directly to the president of the
20 company. I'm not sure. I don't know how
21 that went.

22 Q This is just a follow-up
23 question here. The last time we were

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1 other than, you know, worry about
2 everything that was going on. I got to go
3 play and it was fun and I enjoyed it. It
4 made me feel good, and then it was back to
5 reality.

6 Q When you talk about having a lot
7 of responsibilities and going back to
8 reality, you are referring to your dad's
9 illness and your responsibilities as a
10 single dad, right?

11 A Right. That's a lot of work.

12 Q I'm sure it is. And you are not
13 referring to any other problem or issue
14 when you are talking about this, are you?
15 Was there anything else going on?

16 A I would have to say that before
17 that, you know, getting divorced. That was
18 a great deal of emotional pressure. I had
19 done everything for everyone else at that
20 point. So, doing a little something for
21 myself was kind of a well-needed thing or
22 well deserved.

23 Q Do you remember what date your

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1 together, you indicated that you were asked
2 to join the McQueen Street Band for a
3 reunion show in 2003. Do you remember that
4 testimony?

5 A Yes.

6 Q And when you were talking about
7 that, you said you were honored to be
8 asked. Do you remember that?

9 A Right.

10 Q And you also said I believe
11 something along the lines of with all that
12 was going on, it was also something of an
13 escape. Do you remember saying that?

14 A Perhaps. Would you like me to
15 clarify that?

16 Q I was just going to ask you what
17 you meant by all that was going on.

18 A I had a lot of responsibilities,
19 and my father's illness, my daughter. It
20 was kind of like -- escape was a bad word.
21 It was a very-much-needed temporary
22 distraction. Not an ongoing one, but just
23 a temporary distraction, something to do

Page 227

1 divorce was final?

2 A I know the date. I don't
3 remember what year. August 9th of -- I
4 don't remember what year. That's bad.

5 Q Was it the year prior to the
6 issues with your dad, or had it been
7 several years that you had been divorced
8 from Melissa?

9 A If you will give me a minute, I
10 can tell you what year it is. If I could
11 look -- I think I have a copy of my divorce
12 decree.

13 Q Don't refer to any notes that
14 you don't want me to see.

15 A If it's my divorce decree, it's
16 public record. I think I've got a copy of
17 that. So, it would be August -- does that
18 say '03?

19 MR. BLYTHE: '02.

20 A '02. It was final on August the
21 9th '02.

22 Q Thanks for checking that.

23 A No problem.

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1 **Q** The last time we talked, you
2 said that prior to playing in Cold Hard
3 Truth, you played in a band with a friend.
4 Do you remember that testimony? What I'm
5 getting at is was there another band you
6 played in besides McQueen Street, Rat Race
7 and Cold Hard Truth?

8 **A** Oh, sure. I've filled in with
9 bands. There was never any kind of
10 permanent situation. I played bass in a
11 band, but that was not a permanent
12 situation.

13 **Q** So, since you left Miltope the
14 second time, you are saying that you filled
15 in with bands at various times but not on a
16 permanent basis?

17 **A** Right.

18 **Q** When you filled in with those
19 bands, did you receive some compensation
20 for those shows?

21 **A** Sometimes. Most of the time,
22 yes, or I wouldn't -- I wouldn't have done
23 it had I not.

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1 **Q** Were you sometimes with the Jeff
2 Golden Band again?

3 **A** No.

4 **Q** Is it your testimony that your
5 income from filling in was not sufficient
6 to report to the IRS?

7 **A** No, it wouldn't have been. Or I
8 was told by the accountant that it wouldn't
9 have been.

10 **Q** You do have an accountant?

11 **A** That filed taxes when I did, yes.

12 **Q** The last time we talked, you
13 said that working two days a week with Cold
14 Hard Truth I believe you said is the best
15 arrangement considering your family
16 obligations. Do you remember that
17 testimony?

18 **A** Well, I mean, under the
19 circumstances, it works. Something else
20 would probably work, too, you know.

21 **Q** Are you pursuing any other
22 options that you think would work better
23 for your family?

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1 **A** At this moment, no.

2 **Q** Have you actively pursued any
3 other options in the last couple of years?

4 **A** Actively. I might have talked
5 to someone about something. But as far as
6 -- no. Actively, no.

7 **Q** Is there any other work schedule
8 that you think would work better for your
9 family than what you are doing now?

10 **A** I'm not sure.

11 **Q** You haven't come up with a
12 different idea?

13 **A** If the opportunity presented
14 itself, I might consider it and think about
15 it. But I don't dwell on that.

16 **Q** Last time we talked about your
17 dad going to the Presbyterian church at
18 some time in his life. Does he still
19 attend church today?

20 **A** No.

21 **Q** Is he physically able to attend
22 church?

23 **A** No.

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1 **Q** And why is that? Can you tell
2 me something about his physical condition
3 that --

4 **A** He sometimes cannot -- how do I
5 say that?

6 **MR. BLYTHE:** Just say it.

7 **A** There have been instances where
8 he has used the restroom on himself and
9 that kind of thing, and that would not be
10 something that I would want to put him
11 through.

12 **Q** So, was there a time that you
13 stopped -- well, can you point to a time
14 when he stopped attending church for the
15 reason that you just described? In other
16 words, is there a time frame for when this
17 began?

18 **A** When his dementia started, when
19 the Alzheimer's hit.

20 **Q** I want to ask you about this
21 opportunity you had with Tom Bradley, who
22 was a program director. Do you remember
23 that?

(Pages 232 to 235)

7

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1 A Yes.

2 **Q As I understand it, you were**

3 **being asked to take on a job that would**

4 **have taken you away from home for about two**

5 **weeks; is that right?**

6 A Two weeks at a time is what I

7 was told.

8 **Q Two weeks at a time. And this**

9 **would be a different role within Miltope**

10 **that you were being asked to assume; is**

11 **that right?**

12 A Right.

13 **Q Were you being asked to do this**

14 **around the time that you were telling me**

15 **you were seeking leave?**

16 A It was prior to me seeking

17 leave.

18 **Q Do you remember the title of**

19 **that job?**

20 A I want to say that it was DPA

21 upgrade administrator or something of that

22 nature, something close to that. The

23 program was a DPA upgrade.

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1 **Q Last time we talked about your**

2 **meeting with Mr. Crowell on October 27th.**

3 **Do you remember that meeting you told me**

4 **about?**

5 A Yes.

6 **Q When y'all were talking about --**

7 **when y'all were having that meeting, my**

8 **understanding is that the DP upgrade**

9 **administrator job was off the table. That**

10 **was not discussed between you and Mr.**

11 **Crowell at that time; is that correct?**

12 A I believe I mentioned that, and

13 I also believe that I -- I told him that

14 there was no possible way that I could go

15 and be gone to all these different Army

16 bases for a week or three days or two weeks

17 at a time in the situation that I was in.

18 **Q Had you not already rejected**

19 **that position, though, by the time you**

20 **spoke with Mr. Crowell in October 2003?**

21 A I had told Mr. Bradley, I had

22 told Gabe, I had told Brian that we were

23 going to have to find someone else to do

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1 this. And I don't -- I don't know at that

2 point in time if they had taken it off the

3 table or not.

4 **Q In other words, do you think you**

5 **were still being encouraged to reconsider?**

6 A Yes.

7 **Q Did all this come up for the**

8 **first time after July of '03, or do you**

9 **remember?**

10 A After July of '03 when my father

11 was in the hospital the first time?

12 **Q Yes.**

13 A It came up after that. I think

14 in a way I wanted to try to do more, to be

15 more of a provider for my family, and I

16 really wanted to be, you know, more

17 financially successful. And after looking

18 -- I went to Redstone Arsenal with Mr.

19 Bradley and I saw what truly was involved

20 in the whole thing. And there was no way I

21 was going to be able to fill that role that

22 needed to be filled, and I told him he was

23 going to have to get someone else. And the

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1 reason that I made that decision and

2 thought that was there was a gentleman

3 there at Redstone whose wife was at home

4 dying of cancer, and he was at work. And I

5 couldn't understand that. That's what made

6 me think of that. I said, "There's just no

7 way I can do this."

8 **Q Did that make you feel that you**

9 **should be home with your dad at that point?**

10 A Yes, it did. When I saw someone

11 that wasn't at home with their loved one,

12 that's what really made me think that. And

13 things just kept stacking up that made me

14 make my mind up about that. And then we

15 had that meeting. And it was like when I

16 came out of the meeting, I was totally

17 confused again about all those great ideas

18 that I had, I need to do this, I need to do

19 this, I need to do that. And then I left

20 that meeting and I was like, okay, now I

21 feel bad. Now what do I do?

22 **Q What you are referring to I**

23 **believe is when you left the meeting with**

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1 **Mr. Crowell on October 27th. Am I right?**

2 A Right.

3 **Q When you say you left that**
 4 **meeting confused, am I right that at that**
 5 **point you did not specifically say I need**
 6 **my leave to start on such and such date,**
 7 **that you left it open?**

8 A When I went in there, I went in
 9 there to tell him I needed to take the
 10 leave. And when I told him that and he
 11 spent 20 minutes or so -- I don't recall
 12 exactly how long the meeting was. But when
 13 he had told me the story about his father
 14 and that kind of thing, that kind of made
 15 me feel like maybe I can work my way
 16 through this and get through this and take
 17 care of everything I've got to take care
 18 of.

19 In other words, after I left the
 20 meeting, I had been completely talked out
 21 of exactly what I went in there to tell
 22 him. So, I went back to my cube and went
 23 back to work, and then the events that

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1 followed that week were the events that
 2 made me call Brian and tell Brian to turn
 3 that paperwork in.

4 **Q What do you recall of what you**
 5 **were told about his dad's illness?**

6 A I believe he told me that his
 7 father also had had cancer. And he told me
 8 that even though he was sick, he spent a
 9 lot of time with his dad and he was able to
 10 -- you know, he had family I believe he
 11 told me that helped him. Of course, he was
 12 married. He had brothers and sisters and
 13 other family that could help and that kind
 14 of thing. But, see, I wasn't -- I didn't
 15 have that.

16 **Q Did he tell you what kind of**
 17 **treatment his dad was receiving?**

18 A I don't recall.

19 **Q Did he tell you whether his dad**
 20 **was able to drive and take care of himself**
 21 **during his cancer?**

22 A I don't recall.

23 **Q So, when you left that meeting**

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1 with Mr. Crowell and you say you were --
 2 you felt talked out of what you had wanted
 3 to do, is that the basis for your claim
 4 that your attempt to get FMLA leave was
 5 interfered with?

6 A I don't think that it's the
 7 base. I think it's the -- no.

8 **Q Is there something else that**
 9 **happened that told you, hey, someone is**
 10 **trying to prevent me from exercising my**
 11 **rights?**

12 A I was waiting on a letter from
 13 my father's doctor to forward to Brian
 14 Burkhead. I got the letter, forwarded the
 15 letter the next day or the day after. I
 16 think it was the next day I got a letter in
 17 the mail telling me that I had been fired
 18 for failure to report to work for three
 19 consecutive days. That's the crux of this
 20 whole thing to me, honestly.

21 **Q So, those are the events that**
 22 **you think are the most important in terms**
 23 **of your claims?**

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1 A Well, I think all the events are
 2 important. And the combination of all of
 3 them rolled up into one is why we sit here.

4 **Q You don't dispute that you**
 5 **didn't call in those three days, though,**
 6 **right?**

7 MR. BLYTHE: Object to the form.

8 **Q Do you understand the question?**

9 MR. BLYTHE: You can answer.

10 **Q I can ask you a different one if**
 11 **you are having trouble answering.**

12 A Please.

13 **Q There were days that you did not**
 14 **call in, correct?**

15 A Yes.

16 **Q Did you have any reason to think**
 17 **that you had been fired before you received**
 18 **that letter?**

19 A Not really, no.

20 **Q Was there any conversation you**
 21 **had with any Miltope employee before you**
 22 **got that letter that made you worry that**
 23 **you were going to be fired?**

(Pages 240 to 243)

9

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1 A I believe there was.
 2 **Q Tell me about that, please.**
 3 A Can we go off the record for a
 4 second and let me ask Derrick a question?
 5 (Discussion held off the record)
 6 **Q Back on the record.**
 7 A A Miltope employee called a
 8 friend of mine and asked, "Where is Pat?
 9 Nobody can find Pat. We've been trying to
 10 get in touch with Pat." And at that point
 11 they told them, "I don't know where he is.
 12 I'll check and see if I can find him." And
 13 he got off the phone with that person and
 14 called me and said that somebody had called
 15 looking for me. And I was like, "Well, why
 16 didn't they call me?"
 17 I was told by someone else that
 18 Brian and Gabe were directed not to answer
 19 any of my e-mails or return any calls that
 20 I might have made.
 21 **Q Is there anything else?**
 22 A No.
 23 **Q Who was the Miltope employee who**

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1 **called your friend?**
 2 A Darlene Hill.
 3 **Q And who was the friend she**
 4 **called?**
 5 A Rhonda Blythe.
 6 **Q The wife of your attorney?**
 7 A Yes.
 8 **Q Who told you that Gabe and Brian**
 9 **had been instructed not to respond to your**
 10 **e-mails?**
 11 A I believe it was Tina Howell.
 12 **Q Tina who?**
 13 A It was either Tina or Darlene.
 14 I don't remember which one.
 15 **Q Do you remember Tina's last**
 16 **name?**
 17 A Howell.
 18 **Q And she was a Miltope employee?**
 19 A Yes.
 20 **Q If I remember your testimony**
 21 **correctly before, you communicated via**
 22 **e-mail during this month of November. You**
 23 **did not make phone calls. Did I**

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1 **misunderstood you?**
 2 A I might have talked to her. But
 3 as far as -- you asked me did I communicate
 4 with Gabe or Brian or Mr. Crowell. No, I
 5 was not going to communicate with them on
 6 the phone. But other people I did talk to
 7 on the phone that were friends other than
 8 just people that worked there.
 9 **Q Did you call anyone who was a**
 10 **Miltope employee to talk about whether you**
 11 **were still going to come back to the**
 12 **company after your personal situation**
 13 **resolved?**
 14 A Oh, I had -- I had every
 15 intention of going back to work.
 16 **Q I'm asking a different**
 17 **question.**
 18 A Okay. Please clarify.
 19 **Q Let me back up and say I**
 20 **understand that you didn't call Gabe or**
 21 **Brian or Ed on the phone.**
 22 A Right.
 23 **Q You sent them e-mails.**

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1 A Right.
 2 **Q But you said you did make phone**
 3 **calls to other people who were friends.**
 4 A Right.
 5 **Q Were any of those friends**
 6 **Miltope employees?**
 7 A At the time?
 8 **Q Yes.**
 9 A Yes.
 10 **Q Who were those folks?**
 11 A Tina Howell.
 12 **Q And Darlene?**
 13 A I didn't -- the only time I
 14 called Darlene was when I was reporting to
 15 work that I wouldn't be there, one of those
 16 days.
 17 **Q But you called Tina as a friend?**
 18 A Right.
 19 **Q And did you also call Crystal as**
 20 **a friend?**
 21 A Probably, yeah. They kept a
 22 boat at my house at that time, if you will
 23 recall that. And I might have not called

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1 and talked to her about it. I might have
2 talked to her about it when they were at my
3 house.

4 **Q And when you talked to Tina as a**
5 **friend, did she tell you they really want**
6 **you to call and talk to them about this?**

7 **Did she say anything at all about --**

8 A I don't remember exactly. It's
9 possible that they said that I should
10 call. You know, I did send e-mails, and I
11 wanted an answer that way. I didn't --

12 **Q Did you think you had the right**
13 **to dictate how they could communicate with**
14 **you?**

15 A I wasn't trying to dictate how
16 they communicated with me. I was trying to
17 protect myself at that point in time.
18 Because at that point in time I had, like I
19 said, received a letter telling me that I
20 had been fired. And I did not want to say
21 anything or do anything that -- I just
22 really didn't know what was going on, and I
23 wanted some answers. But I wanted them

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1 where I could look at them instead of
2 trying to recall what I had talked to them
3 about on the phone or what they had said to
4 me on the phone.

5 **Q Am I right that you came to this**
6 **conclusion that you only wanted to talk to**
7 **them in writing by e-mail after you**
8 **received that letter from Ed Crowell?**

9 A Probably.

10 **Q You didn't have any reason to**
11 **distrust them before that letter, did you?**

12 A I had sent the letter prior to
13 that. And I had told Brian after I asked
14 him to turn that paperwork in, "If there is
15 anything else, please let me know," which
16 would mean if Mr. Crowell is looking for
17 you to call him to discuss this matter
18 about you losing your job, I will let you
19 know. See, Brian could have let me know.
20 Brian did not let me know.

21 **Q When you said you provided the**
22 **letter, are you referring to the doctor's**
23 **letter that you asked the doctor's office**

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1 **to fax to Miltope?**

2 A Yes.

3 **Q And you personally did not**
4 **provide that letter, correct?**

5 A Rephrase it.

6 **Q As I understood your testimony**
7 **last time, you asked that letter to be**
8 **faxed on your behalf.**

9 A Right.

10 **Q But you personally did not fax**
11 **it or hand deliver it?**

12 A I stood at the desk at the
13 doctor's office and watched her walk with
14 the letter to the fax machine, send it, and
15 then brought it back to me.

16 **Q And that's what you mean by**
17 **providing the letter?**

18 A Right, from the doctor's
19 office. I don't own a fax machine.

20 **Q What did you tell Tina when you**
21 **talked to her as your friend during this**
22 **time period?**

23 A I told her I didn't have any

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1 clue what was going on. I told her that
2 Darlene had called looking for me. And
3 then I believe she told me that Gabe and
4 Brian were directed not to have any further
5 communications with me. And the only
6 response I got as an e-mail from Gabe
7 regarding anything was that I needed to
8 provide them with the CAV passwords, which
9 I had already done. I had already given
10 them to Lee Butler who was helping me ship
11 stuff while I was running in and out of the
12 doctor's office on the phone. There are
13 people that can verify that.

14 I was working shipping things
15 out, getting things done. Lee was
16 helping. I had already done that. And the
17 only answer I got back from him was I need
18 the passwords and I need you to return the
19 company laptop when you can. No mention of
20 anything else that was going on. Just I
21 need the passwords and I need this.

22 **Q When Tina said that Gabe and**
23 **Brian had been instructed not to respond to**

(Pages 248 to 251)

11

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1 your e-mails, did she say what the source
2 of her information was?

3 A No.

4 Q What was Tina's position at
5 Miltope?

6 A She was a trainer.

7 Q What kind of trainer?

8 A She taught classes on
9 certifications that we had to have.

10 Q She was not in supervision, was
11 she?

12 A No.

13 Q Did it occur to you that she
14 might just be passing on idle gossip
15 instead of reliable information?

16 A No. I trusted what she said.

17 Q Did it occur to you she might
18 have been mistaken?

19 A Ditto. No. I can't answer the
20 -- can we take a break, please? But I need
21 to answer that question first.

22 Q The question was did it occur to
23 you that she could have been mistaken?

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1 A No.

2 MS. LINDSAY: We can take a
3 break. I need one, too.
4 (Short break was taken.)

5 Q Back on the record. Earlier you
6 testified that you were wondering why they
7 had not tried to call you at home, the
8 Miltope folks. Do you remember that?

9 A Yes.

10 Q How do you know they weren't
11 trying to call you at home?

12 A I would have seen the number on
13 the phone or either answered the phone.

14 Q Were there times you saw their
15 number on the phone and you just didn't
16 want to pick up and talk to them?

17 A I don't think so.

18 Q Isn't it possible there were
19 times you weren't home to pick up the phone
20 and they tried to call you?

21 A It's possible.

22 Q When you say you gave the
23 passwords to Lee Butler, you didn't give

Page 250

1 them to him in writing, did you?

2 A I probably gave them to him over
3 the phone when I was talking to him over
4 the phone.

5 Q And it's possible that Brian and
6 Gabe did not know you had conveyed that
7 information to Lee, isn't it?

8 A It would be hard for them not to
9 know, because Lee was shipping an order out
10 that needed work done in the computer that
11 Lee would have had to have done.

12 Q How do you know that?

13 A Because those documents have to
14 have what's called -- or those items have
15 to have what's called a DD-1348, which is a
16 form that the items would have to have on
17 them to be shipped according to procedure.

18 Q Did Lee complete such a form for
19 you when you were out?

20 A I walked him through doing
21 those. I think I've got an e-mail from
22 Melody Orr, who was my contact person at
23 NAV ICP.

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1 Q And her e-mail would establish
2 what?

3 A That we were getting the 1348's
4 printed out to ship those.

5 Q Was this while your dad was at
6 that appointment?

7 A Yes. I was in the doctor's
8 office with my father, and he was back I
9 think doing blood work while I was doing
10 this with Lee on the phone.

11 Q According to your calendar, that
12 occurred on November 6th, a Thursday. Do
13 you have any reason to think your calendar
14 is incorrect?

15 A I would have to go back and
16 check, but I don't think so.

17 Q According to your calendar note,
18 you said, "Took dad to doctor. Spoke to
19 Lee Butler on phone regarding Order Number
20 5071 three times. Called Mech" --

21 A Mechanicsburg.

22 Q Mechanicsburg, an abbreviation,
23 M-E-C-H, Mel Orr to get CAV link sent to my

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1 house. She did.

2 A Right.

3 Q So, if the CAV link was sent to
4 your house, would you have been able to
5 work from home?

6 A She told me that I would be able
7 to work from home and get those forms
8 printed out, but my computer was not quite
9 up to par on doing that.

10 Q So, when the forms did not get
11 printed out from your home for order number
12 5071, what did you do next?

13 A Melody went in the system and
14 completed them, which is something that has
15 to be done. And I had given Lee the
16 passwords, and Lee would have printed the
17 forms out.

18 Q Why would Lee need the passwords
19 if Mel had already completed them?

20 A Melody could not -- when I say
21 completed, that is a status code in the
22 system to show that that item is repaired
23 and finished, completed. But those

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1 Q According to your notes, it says
2 on Saturday, "McQueen Street load-in."

3 A That was when we met there and
4 got the gear out. And we might have
5 rehearsed for a little bit, but not much.
6 The rehearsal was basically Sunday.

7 Q And then according to your
8 calendar, the rehearsal also occurred on
9 Monday, November 10th?

10 A Probably Monday morning. I
11 think we had to leave by a little after
12 lunch.

13 Q Did you ever tutor someone named
14 Josh?

15 A Josh Brewer.

16 Q On your November 11th entry it
17 just says, "Josh PMT due 7/30." Was that a
18 payment due to you?

19 A For his lessons.

20 Q So, you were tutoring Josh?

21 A Yes.

22 Q When you were picking up Sydney
23 from visiting her mom that prior weekend,

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1 documents that have to be shipped with them
2 have to be printed out and attached to
3 them. So, she could not have done that
4 short of printing them out and faxing all
5 of them to him to put on there. And then
6 the bar codes would probably not have read
7 correctly at that point.

8 Q On your calendar entry for
9 November 7th, you say, "Worked with Lee on
10 phone. Talked to Brian Goff, 6487."

11 A That might have been when we
12 were trying to get those printed out.

13 Q So, you were trying to get Order
14 5071 shipped out on that Friday?

15 A Exactly.

16 Q When you couldn't get it done at
17 home?

18 A Right.

19 Q And on that same day, you were
20 also preparing to go to Atlanta for a
21 McQueen Street rehearsal, correct?

22 A I believe so. I think it was on
23 Sunday we had that rehearsal.

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1 do you remember how you told me you had a
2 flat tire and you got in real late?

3 A Right.

4 Q You were picking her up on
5 Sunday night, right?

6 A Correct.

7 Q That following Monday you said
8 you were too tired to come to work, right?

9 A Right.

10 Q And that's when you called in to
11 Darlene and told her you had a flat tire?

12 A Right.

13 Q So, I guess it's inaccurate on
14 your calendar when you wrote on the 3rd,
15 which was that Monday, "Worked. Syd went
16 to school"?

17 A It could be, yes. Let me look
18 at that, please.

19 Q Let me give you another copy.

20 A Yeah, that's not correct.

21 Q Okay.

22 A Because that was the Monday that
23 she was down there for Halloween. This is

(Pages 256 to 259)

13

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1 November 3rd. I believe Halloween was over
2 that weekend or the end of that week.

3 **Q And, in fact, the Miltope**
4 **records in terms of your time worked**
5 **reflect that you were absent on that**
6 **Monday, as well.**

7 A Yes. You are correct in that.

8 **Q So, is it possible there are**
9 **other inaccuracies on this Exhibit 9?**

10 A I'm sure it's possible. I mean,
11 I don't -- I don't think there is. If you
12 would like for me to review that, I will.

13 **Q Well, did you fill it out after**
14 **the fact, after these dates?**

15 A No. It was around the same time
16 all this was going on. I just made a
17 mistake.

18 **Q Did you look for any other**
19 **calendars that you had for July, August,**
20 **September, October?**

21 A No.

22 **Q Did you have any more?**

23 A I might have had one like on the

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1 refrigerator at home or something, but I
2 don't have it. I've got one that was in my
3 office, but I think it's mostly -- this was
4 '04, so it's not pertinent.

5 **Q Before your father had pneumonia**
6 **in July, you were good friends with Rhonda**
7 **Blythe, right?**

8 A Yes.

9 **Q Did you have any information**
10 **about any complaints she may have had**
11 **against Miltope at that time?**

12 A Not really.

13 **Q What do you know, if anything,**
14 **about complaints she may have had against**
15 **Miltope?**

16 A All I know about that is she was
17 working there and she had complications
18 with her pregnancy, and then after that she
19 was not working there. But I don't know
20 any details.

21 **Q Did you ever hear that she was**
22 **claiming she was being paid differently**
23 **from men?**

1 A No.

2 **Q In your discussions with Rhonda,**
3 **did she indicate that she had something**
4 **against Miltope?**

5 A Not -- I mean, no.

6 **Q Do you know why -- when she was**
7 **called by a Miltope employee looking for**
8 **you, do you know why she didn't just tell**
9 **them, "Yeah, I know where he is"?**

10 A She probably said, "I don't know
11 exactly where he is. Have you tried his
12 house?" I mean, I was not a party to the
13 conversation. I don't know what exactly
14 she said. I do know that some time after
15 that conversation that they had, I was
16 called and I was at home.

17 **Q And did you pick up the phone?**

18 A Yeah.

19 **Q Who did you talk to?**

20 A Derrick.

21 **Q Oh. You are not talking about a**
22 **Miltope employee calling you, then.**

23 A No. I don't recall anyone

1 calling me. I think Tina might have called
2 me or e-mailed me or something of that
3 nature.

4 **Q Do you remember asking Ed**
5 **Crowell if you could buy some audio**
6 **equipment that Miltope was going to discard?**

7 A I remember Miltope having some
8 television production equipment, which did
9 include some audio equipment, that was from
10 a lessor of part of the building.

11 **Q When was that?**

12 A I do not have a clue. I don't
13 remember.

14 **Q Do you remember asking if you**
15 **could have a microphone from that set of**
16 **equipment?**

17 A I remember asking -- no, it was
18 not a microphone. I might have asked about
19 a microphone. But he told me that there
20 was a small mixing board, and I asked him
21 about that. And I found someone that
22 purchased the lot of that, and it was my
23 understanding that he had let me have that

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1 little mixing board for helping them
2 liquidate that equipment.

3 **Q Do you remember being quoted**
4 **that if you would give -- if you would pay**
5 **\$200, you could have that equipment, that**
6 **mixing board?**

7 **A I remember him saying something**
8 **about that. But after I -- he told me I**
9 **could purchase it outright for that. But**
10 **then after I found someone that bought the**
11 **lot of it, no mention was made of money at**
12 **all after that.**

13 **Q When you were employed at**
14 **Miltope the first time, you received a**
15 **handbook like this here (indicating),**
16 **correct?**

17 **A Yes.**

18 **Q And do you still retain a copy**
19 **of that handbook?**

20 **A I don't know. I don't think so.**

21 **Q Were you ever asked to give it**
22 **back?**

23 **A I don't recall that.**

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1 **Q Between the time that you left**
2 **Mr. Crowell's office on October 27th and**
3 **the time you picked up your daughter that**
4 **following weekend, did you have any**
5 **conversations with Gabe or Brian about**
6 **possibly taking leave?**

7 **A I might have talked to both of**
8 **them about it, but I don't remember an**
9 **exact conversation.**

10 **Q If I understood your testimony**
11 **correctly, you left Mr. Crowell's office**
12 **wondering if you could possibly manage to**
13 **continue your job and care for your dad**
14 **based on what Mr. Crowell's story was about**
15 **his own father's illness; is that right?**

16 **A Maybe. But I -- go ahead.**

17 **Q And if I understood you**
18 **correctly, you reconsidered that position**
19 **when this week of November 3rd became so**
20 **difficult to manage with the illness of**
21 **your daughter and your father's needing**
22 **care?**

23 **A Yes.**

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1 **Q So, am I understanding how you**
2 **were making decisions at that time period,**
3 **or is there something else you need to tell**
4 **me so I can understand your decision-making**
5 **process?**

6 **A Could you clarify that, please?**

7 **Q Sure. If I understand you**
8 **right, after the conversation with Mr.**
9 **Crowell on October 27th until the week of**
10 **November 3rd when things became very hectic**
11 **for you, in that interim period you were**
12 **considering managing your job as well as**
13 **the care of your dad? In other words, you**
14 **were --**

15 **A Was I entertaining the idea of**
16 **trying to do that? Yes. I was trying to**
17 **figure out how I would be able to do both.**

18 **Q So, you were debating whether to**
19 **take leave at all in that week period?**

20 **A Well, I had already filled out**
21 **the paperwork. It was more or less I was**
22 **debating on whether or not to turn it in.**

23 **And then when all those events took place,**

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1 there was no other option. I thought about
2 it. And when everything started happening,
3 there was just no way.

4 **Q So, as things became difficult**
5 **the week of November 3rd, that prompted you**
6 **to call or to discuss with Brian your**
7 **request that he turn in the paperwork for**
8 **you?**

9 **A Exactly.**

10 **Q Was there anything else that**
11 **prompted you to ask Brian to turn in the**
12 **paperwork for you?**

13 **A I just think the situation as a**
14 **whole was what prompted me to turn the**
15 **paperwork in.**

16 **Q That situation being the events**
17 **of the week of November 3rd?**

18 **A The events of that, yeah, the**
19 **events as a whole.**

20 **Q When you asked Brian to turn the**
21 **paperwork in for you, did you tell him that**
22 **there was a date certain that you wanted**
23 **your leave to begin?**

(Pages 264 to 267)

15

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1 A The paperwork had a place on it
2 for the requested date of the leave to
3 begin, and the blank had "immediately"
4 filled in. So, as of that moment.

5 **Q After you received the letter**
6 **from Ed Crowell telling you that you had**
7 **violated the no call-no show policy and**
8 **were considered terminated, did you**
9 **understand that you could be reinstated to**
10 **your job if you requested reconsideration**
11 **and tried to correct any policy violations?**

12 A I could not believe that I had
13 gotten that letter. And I did not take
14 that letter as you need to call and
15 straighten all this out. I took that
16 letter as I had been terminated. It had
17 date of termination on there. So, in other
18 words, I had been fired.

19 Now, after all the events that
20 had taken place getting that letter, the
21 part on there that stuck out the most was
22 you've been terminated or your employment
23 has been terminated as of this date.

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1 **Q But there's nothing in that**
2 **letter that says you are not eligible for**
3 **rehire, is there?**

4 A I didn't understand at that
5 point why I would have to be rehired if I
6 had filled out paperwork for a leave.

7 **Q My question is --**

8 A No.
9 (Defendant's Exhibit 11
10 was marked for.
11 identification)

11 **Q I'm going to show you what I've**
12 **marked as Exhibit 11. If I understand**
13 **correctly your testimony, this is the**
14 **document that the hospice employee was**
15 **directed to fax to Miltope; is that correct?**

16 A No. Let me clarify that. The
17 hospice employee picked this letter up for
18 me from Dr. Law's office and brought it to
19 my house. At that point I took the letter
20 back to the doctor's office and had her fax
21 it, because I do not have a fax machine.
22 And I was asked to provide a letter from
23 the doctor's office, and that's exactly

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1 what I did. I took it back up there and
2 had her fax it. Because I kept telling
3 her, "I need to get this letter from the
4 doctor." I told her I needed to get that
5 letter from the doctor, and she called up
6 there and checked into why the letter
7 wasn't ready yet and that kind of thing.
8 And I think the next time she came down was
9 when she came and brought the letter.

10 **Q So, the letter you were**
11 **referring to is what we have designated as**
12 **Exhibit 11, right?**

13 A Yes.
14 (Defendant's Exhibit 12
15 was marked for.
16 identification)

16 **Q Let me show you what I've marked**
17 **as Exhibit 12.**

18 A That's that letter, other
19 letter.

20 **Q Be aware if you are going to**
21 **rely on notes while we are talking, I get**
22 **to look at them. So, you might want to**
23 **close your notebook**

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1 A I'm making notes as we go. I'm
2 writing as we go. I mean, this is just
3 stuff I'm writing down as we go here.

4 **Q Did you ask the doctor to do**
5 **this letter dated November 29th, Exhibit**
6 **12?**

7 A Yes, I did.

8 **Q And did you obtain a copy of**
9 **this letter from Temple Medical Clinic?**

10 A Yes, I did.

11 **Q What was the purpose for getting**
12 **this letter dated November 29th?**

13 A After I received the letter from
14 Miltope telling me that I had terminated or
15 been terminated or terminated my position
16 for failure to report for three consecutive
17 days, I had no idea in the world what that
18 would be the cause of. I sent e-mails
19 asking why. I had no idea why. I thought,
20 you know, maybe I need to call the doctor
21 and get a better explanation of this. No
22 one ever told me I needed another letter.
23 Nobody ever contacted me about a letter.

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1 But I had another letter done detailing
2 everything that was going on with my dad.

3 **Q Did anyone give you the idea**
4 **that you should get this detailed letter?**

5 A I came up with that all by
6 myself.

7 **Q Why didn't you mail this letter**
8 **or have this letter faxed to Miltope?**

9 A Well, it says on the previous
10 letter please feel free to contact me for
11 any questions from the doctor's office.
12 After some after-thought about having this
13 other letter done, I thought if there's a
14 reason that Miltope needed to contact the
15 doctor's office, they could clarify this
16 and it would be a mute point. Because they
17 had a way to contact the doctor and the
18 medical clinic for clarification or either
19 for anything else they might need to figure
20 out or to go with that leave paperwork that
21 I had turned in.

22 **Q So, rather than provide this**
23 **November 29th letter to -- strike that.**

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1 **This letter is dated November 29th 2004.**
2 **Is that the correct date?**

3 A Right.

4 **Q So, this was done over a year**
5 **after you left Miltope?**

6 A Right. Well, I don't know. It
7 says right there since July 2003, if you
8 will read in the letter. It could be a
9 typographical error. I'm not sure. We
10 would have to contact Temple Medical Clinic
11 to find out.

12 **Q Let's look at the letter,**
13 **because I think we can establish it was**
14 **2004. He states towards the middle of the**
15 **letter, "A repeat CT of the chest done in**
16 **November of 2004 revealed no sign of**
17 **malignant tumor."**

18 A Then the date is correct.

19 **Q Was your idea that you could use**
20 **this letter with another potential employer**
21 **other than Miltope?**

22 A No, no, no.

23 **Q So, your primary purpose in**

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1 **getting this letter was to assist you in**
2 **pursuing your claims against Miltope?**

3 A After a lot of thought about the
4 whole thing, the only thing I could come up
5 with was maybe this letter did not satisfy
6 what Miltope needed. So, I just wanted him
7 to detail in a letter the situation, how it
8 was, how it was then, everything else, and
9 then there would be no question of it. But
10 as I said before, they had a way to contact
11 the doctor's office if the letter had been
12 the problem. That was never done. So, I
13 had to think after that fact that that
14 could not have been what it was.

15 **Q So, rather than provide this**
16 **letter to Miltope, your expectation was**
17 **that Miltope would contact the doctor**
18 **directly based on the prior letter of**
19 **November 5th, correct?**

20 A Right.

21 **Q So, you did not make a phone**
22 **call or send an e-mail to Gabe or Brian to**
23 **say, hey, by the way, I do have a better**

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1 **letter that may answer any questions y'all**
2 **may have had? You never did that, right?**

3 A I don't think so. Not after
4 that period of time, no.

5 **Q Look back at what was Exhibit 7,**
6 **if you would. Go to the page that at the**
7 **very bottom right-hand corner has the**
8 **number 121 at the bottom. It's labeled**
9 **Decision on Unemployment Compensation**
10 **Claim. Do you see that?**

11 A Right.

12 **Q You appeared for a hearing on**
13 **your unemployment claim against Miltope,**
14 **correct?**

15 A Right.

16 **Q And you were represented by**
17 **counsel, correct?**

18 A Right.

19 **Q And when you appeared at that**
20 **hearing, you were attempting to establish**
21 **that you were entitled to benefits, right?**

22 A Yes. I thought so.

23 **Q There are some findings. Do you**

(Pages 272 to 275)

17

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1 see the paragraphs under the word
2 "Findings"? If you will go to the second
3 paragraph, it says, "The claimant worked."
4 Do you see that line?

5 A Right.

6 Q That first sentence says, "The
7 claimant worked for the listed employer
8 from February 12, 2001, until November 11,
9 2003, as a government property
10 administrator." Is that a correct fact?

11 A Well, it's not a complete fact.
12 But what is listed is correct.

13 Q And when you say it's not
14 complete, you are saying it doesn't
15 reference the prior term of employment with
16 Miltope?

17 A No. It doesn't -- that was not
18 my sole title.

19 Q There's something else that you
20 did for Miltope that you've told us about?

21 A Right.

22 Q The CAV administrator position;
23 is that right?

1 A After I turned the paperwork in
2 for the leave, I told them that they could
3 reach me at home or on my cell phone. And
4 I did not -- I did not know that I had to
5 call in those days. If they needed me,
6 they could have gotten me.

7 Q Are you saying that you told
8 Brian, "You can call me at home or on my
9 cell"?

10 A Right.

11 Q Did you tell anybody else, "You
12 can call me at home or on my cell"?

13 A Brian was my supervisor. If
14 anyone else needed to know, they could have
15 asked Brian.

16 Q So, this communication you just
17 referenced was what happened on November
18 5th, Wednesday?

19 A When he told me he needed a
20 letter.

21 Q This was the day that you asked
22 him to turn in your leave paperwork, right?

23 A Exactly.

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1 A Right.

2 Q So, that was omitted. But
3 otherwise that statement --

4 A That would be a correct
5 statement.

6 Q The next statement is, "The
7 claimant was considered to have abandoned
8 his job after being absent for more than
9 three consecutive working days without
10 proper notice to or permission from the
11 employer." Do you see that statement
12 there?

13 A Yes, I do.

14 Q It is accurate, isn't it, that
15 there were three consecutive working days
16 when there was not notice provided that you
17 were going to be absent, correct?

18 A I think in -- I don't agree with
19 that.

20 Q There were three consecutive
21 working days where you didn't actually call
22 in to say, "Hey, I'm not going to be there
23 today," correct?

1 Q So, from that day forward, you
2 didn't think you were obligated to call in?

3 A No.

4 Q I'm correct?

5 A Yes. And I told him I would
6 keep him abreast of the situation. As I,
7 you know, had things, I sent him an e-mail
8 telling him about the tests and stuff my
9 father had on the 7th -- on the 6th and
10 that kind of thing. I told him I was going
11 to help Lee get that order out of there.

12 Q And did you also say that you
13 were going to try to come in the next day
14 to catch up on some work?

15 A I don't recall if I told him
16 that. I might have.

17 Q If it's in an e-mail that you
18 wrote, you wouldn't have any reason to
19 dispute that, would you?

20 A No.

21 Q And as things became more
22 complicated at home, you tried to work from
23 home using your telephone and your

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1 computer?

2 A I tried.

3 Q Before you had that conversation
4 with Brian about the doctor's letter, you
5 already knew that a doctor's substantiation
6 would be required, didn't you?

7 A He asked for the letter from the
8 doctor, and that's what I tried to provide.

9 Q And prior to that time when you
10 had talked with Brian, Gabe and Ed Crowell
11 and Dee Coulter, you were aware that a
12 doctor's letter was going to be required,
13 right?

14 A I honestly don't remember
15 anything about a doctor's letter or
16 anything. I remember filling out the
17 paperwork. I remember having it in the
18 folder on my desk. I told him if there's
19 anything else he needed, let me know. And
20 that's when he told me he needed a letter.

21 That's all it said, a letter. So, I called
22 the doctor's office and requested a letter.

23 Q You were aware, weren't you,

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1 that if something didn't qualify for family
2 medical leave, you could still get a
3 medical leave of absence with a doctor's
4 note, even if it wasn't a serious health
5 condition, right?

6 A No.

7 Q Do you remember the policy in
8 the handbook that said that an employee
9 requesting a medical leave of absence is
10 required to submit a statement from his
11 physician indicating the need for such a
12 leave?

13 A I don't remember it from the
14 handbook, no.

15 Q Would you look at what is --
16 keep that one handy, because we are going
17 to go back to it. Take a look at Exhibit
18 4. If you will, look on page -- it says
19 129 according to our stamp. It's actually
20 Page 10 of the handbook. Do you see that
21 in that exhibit about three pages back?

22 A All right.

23 Q Do you remember testifying that

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1 you were aware of the policies that are in
2 this Exhibit 4? Do you remember that,
3 Mr. Bailey?

4 A In our last meeting?

5 Q Yes.

6 A I think it -- I remember saying
7 that I remembered that. I did not have or
8 rely on a handbook as I was making these
9 decisions because I was talking to people
10 in positions that would be able to guide me
11 correctly on how to do this. I didn't sit
12 down and figure out how I was going to do
13 this. What I did was I -- Dee had told me
14 that I would qualify. So, that pretty much
15 told me that I would qualify. So, I didn't
16 -- I didn't spend a lot of time researching
17 it in the book.

18 Q When we last spoke, you did not
19 recall Dee saying that you would qualify.

20 A When she came -- well, she
21 brought me the paperwork.

22 Q But you had not completed it
23 yet, so how could she know whether you

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1 would qualify?

2 A Because I told her when she came
3 into my cube about the situation that was
4 going on, and she told me that I would
5 qualify.

6 Q So, did you just remember that
7 since we last met?

8 A I don't know if I -- I might
9 have gotten something confused before. But
10 she brought me the paperwork to fill out.

11 Q Then I'm sure you recall, if she
12 did say that, that she also told you that
13 you would have to submit the doctor's
14 certification to substantiate that?

15 A I don't remember anything period
16 about a doctor's certification. I had
17 someone get me up a copy of the actual form
18 for family medical leave. Since Brian had
19 turned mine in, I did not have a copy of
20 that to look at. And there is a part of
21 that that is several pages into it where it
22 has a section for the doctor to complete.
23 I don't recall ever having seen that

(Pages 280 to 283)

19

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1 before. I don't know if it's two separate
2 parts, and then this detaches and goes to
3 the -- I don't know how that works. But
4 the part that I got to fill out did not
5 have the doctor's certification in it.
6 **Q Well, you couldn't fill out the**
7 **doctor's certification yourself, could you?**
8 **A** I realize that. But I could
9 take that to a doctor and have it filled
10 out.
11 **Q Let's back up. You don't know**
12 **whether Brian ever turned in that**
13 **paperwork, correct?**
14 **A** I would have to think that he
15 did, because when I e-mailed him -- or when
16 I told him to turn it in and let me know if
17 there was anything else he needed, he
18 responded back to me that he needed a
19 letter. So, I would assume that he turned
20 that in.
21 **Q That's just an assumption on**
22 **your part, correct?**
23 **A** No, I don't think so, because he

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1 would have had to have someone tell him
2 that the letter was necessary.
3 **Q If we need to go back over the**
4 **testimony you gave last time, we can. I**
5 **don't want to have to go through that**
6 **time-consuming process. The last time we**
7 **met, you admitted that you didn't know one**
8 **way or the other whether Brian ever turned**
9 **that paperwork in. So, are you changing**
10 **your testimony?**
11 **A** No. I'm adding to my testimony.
12 **Q And you are adding to the**
13 **testimony by saying you think it's a fair**
14 **assumption on your part that he actually**
15 **turned it in?**
16 **A** I asked him to turn it in. He
17 came back and asked me for a letter to go
18 with it. So, I am assuming -- and I'm
19 pretty sure that he had to have taken it to
20 either Dee or someone else for them to tell
21 him, "Oh, he needs this letter."
22 **Q And if Brian testifies under**
23 **oath that he never saw that paperwork in**

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1 **your cube and, therefore, never turned it**
2 **in, you wouldn't say that he's lying, would**
3 **you?**
4 **MR. BLYTHE:** I'm going to object
5 to the form of that question.
6 **THE WITNESS:** Please do.
7 **MR. BLYTHE:** Reword that a
8 little bit.
9 **Q If I represent to you that Brian**
10 **never saw the paperwork and never turned it**
11 **in, do you think that I've been lied to?**
12 **A** Yes.
13 **Q And you think Brian would lie?**
14 **MR. BLYTHE:** Object to the form
15 of the question. Here again, it assumes
16 facts not in evidence. We are assuming
17 stuff that Brian may or may not say or do.
18 **MS. LINDSAY:** That's my whole
19 concern. I think the initial phase that
20 we've come to here is all about an
21 assumption, and I'm trying to clarify
22 that.
23 **A** Brian was my supervisor. I

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1 asked Brian to turn in the paperwork.
2 Brian tells me I need a letter from my
3 father's doctor to go with that paperwork.
4 So, he had to have turned that in to know
5 that a letter was needed.
6 **Q He never told you he turned it**
7 **in, did he?**
8 **A** I e-mailed back telling him that
9 I had requested the letter from the
10 doctor. I think I even thanked him for
11 turning it in.
12 **Q The question is he never told**
13 **you he turned it in, correct?**
14 **A** He never told me he didn't.
15 **Q He never told you he turned it**
16 **in, did he?**
17 **A** I would have to look back
18 through my e-mails to see if there was
19 anything in there about it.
20 **Q I have that exhibit, too. If we**
21 **need to go through it, we can. So, you**
22 **don't know one way or the other how to**
23 **answer that question? All right. Well,**

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1 let's go back to the policy, then.

2 A Can you just rephrase the
3 question so we can get to an answer on
4 that?

5 Q I asked you he never told you
6 that he turned it in, did he? And you
7 haven't answered it yet. Do you have an
8 answer?

9 A Wow. I had no reason to think
10 anything other than he turned it in. No,
11 he did not tell me he turned it in. But
12 nothing in the verbiage of any of his
13 statements back to me or requesting the
14 letter indicated that he had not turned it
15 in. Is that fair?

16 Q I think I understand you.

17 A I'm sorry. I can't be more
18 clear on that.

19 Q If you look back at the policy
20 excerpt that we have labeled Exhibit 4, do
21 you see there that an employee requesting a
22 medical leave of absence is required to
23 submit a statement from his physician,

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1 correct?

2 A Hold on.

3 Q Do you see that at the bottom of
4 Page 10?

5 A Yes, I see that.

6 Q Do you understand that this is
7 something that's entirely independent of
8 FMLA, or do you not know one way or the
9 other?

10 A I don't know.

11 Q Do you expect Brian to have
12 followed the policies in this Miltope
13 handbook?

14 A I have no -- I have no -- I
15 would --

16 Q Do you think he would follow the
17 policy in the handbook?

18 A Yes.

19 Q Do you think Dee Coulter was
20 trained to follow the policy in the
21 handbook, as well?

22 A I'm sure she was.

23 Q And if her training included

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1 that FMLA leave included the requirement
2 that there should be a physician statement,
3 do you think that she would have conveyed
4 that to you?

5 A Probably through Brian.

6 Q You don't think she would have
7 told you that herself when she gave you the
8 paperwork?

9 MR. BLYTHE: I think that
10 question has been asked and answered two or
11 three times.

12 A I don't know.

13 Q Well, last time you didn't
14 remember that conversation with her the
15 same way you remember it today, so I'm just
16 trying to make sure. Do you remember
17 anything else she may have said to you?

18 A Nothing stood out other than she
19 told -- I remember her telling me that I
20 would qualify because I was an only child.
21 I remember her saying something about
22 that. I don't recall anything about a
23 physician's statement, a physician's

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1 letter, anything like that. I don't recall
2 that.

3 Q And this is the conversation
4 where Brian Goff was with you?

5 A I believe so. I think he was
6 working on my computer or something. If
7 Brian had told me, "We need the physician's
8 statement part of the FMLA paperwork filled
9 out by your father's doctor," then I would
10 have probably said, "What is that?" and
11 then we would have proceeded on from
12 there. But I was told I needed a letter,
13 and that's all I was told. So, that's what
14 I did the very same day. In fact, five
15 minutes after I got off with him, I called
16 the doctor's office and requested a letter
17 to go with my FMLA paperwork.

18 Q So, are you saying today that
19 Dee Coulter, without having your completed
20 paperwork in hand, without having the
21 opportunity to discuss with Ed Crowell the
22 circumstances of your situation, that she
23 actually told you, "Yes, you will qualify"?

(Pages 288 to 291)

21

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1 A I don't know if she worded it
2 you will qualify, you will probably
3 qualify, I think you qualify. I don't
4 know. But I got the impression that I
5 would qualify for FMLA after having the
6 conversation.

7 **Q Do you admit that when you had
8 conversations with Brian and Gabe, they
9 both told you that you needed to get in
10 touch with human resources about any
11 requirements in particular to qualify for
12 this FMLA leave?**

13 A Well, I mean, that's why I got
14 the paperwork from her.

15 **Q And --**

16 A I -- go ahead. I'm sorry.

17 **Q If you will, look back on Page 9
18 of the policy.**

19 A That would be 128?

20 **Q That's right. Under Sick Time
21 it says, "The company reserves the right to
22 require medical substantiation following
23 three days of consecutive absence." Hadn't**

1 piece of paperwork. But I told them that
2 her birthday is going to be the 21st of
3 February. I want to be off on that Friday
4 and the following week. That way I would
5 have the whole weekend. She was born on
6 Friday, and I would have the week. I never
7 filled out any paperwork on that at all.

8 **Q How much advance notice did you
9 give to your supervisor about that?**

10 A Probably a week or so at least.

11 **Q When was the c-section
12 scheduled? When was it decided that it
13 would be on February 21st?**

14 A I'm doing good to remember all
15 the others. I can't remember the day we
16 decided.

17 **Q Was it a couple of weeks in
18 advance at least?**

19 A I'm not sure. I don't know. It
20 was -- probably that would be fair. I
21 don't recall exactly the amount of time
22 that passed between the day we decided and
23 the actual day.

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1 you been required before to submit medical
2 substation when your dad --

3 A Never.

4 **Q You are saying you never had to
5 do that before?**

6 A Never. I also never had to fill
7 out the first piece of paperwork when I was
8 off work for a week after my child was
9 born.

10 **Q You were actually at the
11 hospital at that time, weren't you?**

12 A I was at the hospital with my
13 child when she was born, yes.

14 **Q And there wasn't time for you to
15 fill out paperwork when your wife was in
16 labor, was there?**

17 A It was a planned C-section. So,
18 I knew exactly when she was going to be
19 born.

20 **Q So, you didn't tell your
21 supervisor, hey, the c-section is on this
22 date and fill out any paperwork?**

23 A I didn't fill out the first

1 **Q Going back to Exhibit 7, the
2 unemployment compensation claim decision,
3 do you agree that the last time you worked
4 was November 3rd?**

5 A Define work. The last time I
6 was at work or the last time I was doing
7 something for Miltope?

8 **Q I guess the real question is,
9 just to clarify, you didn't actually report
10 to work on November 3rd, correct?**

11 A I called in.

12 **Q And you attempted to do work by
13 telephone when you were not reporting to
14 work that week of November 3rd, correct?**

15 A Right.

16 **Q So, with those clarifications --
17 well, strike that.**

18 **You agree that you were out on
19 November 4th 2003 when your daughter was
20 sick, correct?**

21 A Correct.

22 **Q You agree that you notified the
23 employer at that time, correct?**

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1 A Yes.

2 **Q You agree with the statement**

3 **that on November 5th you were out again due**

4 **to your father's illness?**

5 A Right. And that's the day I

6 asked Brian to turn the paperwork in,

7 November 5th.

8 **Q According to this statement,**

9 **"The claimant had requested a Family**

10 **Medical Leave of Absence related to his**

11 **father's illness in October 2003." That's**

12 **correct, right?**

13 A Yes, because I filled the

14 paperwork out in that week prior to -- the

15 week before. I filled the paperwork out

16 the week before.

17 **Q According to your testimony,**

18 **before you filled that out on October**

19 **27th. Is that still your testimony today?**

20 A I'm not sure. It was the week

21 of the 27th.

22 **Q According to your testimony**

23 **before, you filled out that paperwork the**

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1 **same day you had the meeting with Ed**

2 **Crowell on October 27th. Does that refresh**

3 **your memory?**

4 A It was that week. I'm not

5 exactly sure if it was that day, but it was

6 that week I can say.

7 **Q When you went in to tell Ed**

8 **Crowell that you wanted to take leave,**

9 **hadn't you already completed the paperwork?**

10 A I believe so.

11 **Q It says here you left the**

12 **paperwork on your desk and asked your**

13 **supervisor to turn in the paperwork.**

14 **That's correct, right?**

15 A True. That's correct.

16 **Q It says, "The claimant did not**

17 **provide the required medical documentation**

18 **with the paperwork to justify the request**

19 **for a Family Medical Leave of Absence."**

20 **Now do you disagree with that statement?**

21 A In hindsight, yes.

22 **Q At the time you thought you had**

23 **provided the November 5th letter to**

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1 **Miltope, correct?**

2 A Right.

3 **Q And is that the reason for your**

4 **disagreement with that statement?**

5 A Yes.

6 **Q There is a statement here that**

7 **the claimant was considered to have**

8 **abandoned his job because he had been**

9 **absent from November 6, 2003, through**

10 **November 11, 2003, without notice to or**

11 **permission from the employer. Do you**

12 **disagree with that statement?**

13 A Please do that again.

14 **Q It states here, "The claimant**

15 **was considered to have abandoned his job**

16 **because he had been absent from November 6,**

17 **2003, through November 11, 2003, without**

18 **notice to or permission from the employer."**

19 **Do you agree or disagree with that**

20 **statement?**

21 A I disagree with that because I

22 had turned that paperwork in and asked if

23 there was anything else they needed, please

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1 let me know.

2 **Q So, your disagreement is based**

3 **on the fact that you told Brian on the 5th,**

4 **"Turn in that paperwork for me" and you**

5 **didn't hear anything else from Miltope --**

6 **A Right.**

7 **Q -- about what else might be**

8 **needed?**

9 A You know, nobody came back and

10 said that the letter wasn't sufficient.

11 Nobody came back and said anything.

12 **Q So, the answer to my question is**

13 **yes?**

14 A Yes.

15 **MR. BLYTHE: Wait a minute.**

16 **What was that question?**

17 **MS. LINDSAY: I asked him if he**

18 **disagreed with the statement because, one,**

19 **he had asked Brian to turn in the paperwork**

20 **and, two, he says he didn't hear back**

21 **anything.**

22 A So, that's yes. I'll go with

23 that.

(Pages 296 to 299)

23

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1 **Q** Sometimes if I ask a yes-or-no
 2 question and it really is yes or no, go
 3 ahead and answer it that way. We'll get
 4 done faster.
 5 A All right.
 6 **Q** If you need to tell me more to
 7 make me understand, that's fine.
 8 A Okay.
 9 **Q** When it says without notice to
 10 or permission from the employer, you
 11 disagree with that because you assumed that
 12 you did have the leave approved, correct?
 13 A Yes.
 14 **Q** And did you raise these
 15 objections at the hearing, your
 16 disagreements with these statements?
 17 A Yes, I did.
 18 **Q** The next statement says, "The
 19 claimant was never advised his request for
 20 a Family Medical Leave of Absence had been
 21 approved because the medical documentation
 22 to justify the Family Medical Leave of
 23 Absence was not submitted until after the

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1 claimant was separated." Did you disagree
 2 with that statement?
 3 A Let me read this myself one more
 4 time.
 5 **Q** Go ahead. It's the last
 6 sentence of that Findings section.
 7 A No, I was never advised. I
 8 agree with that statement. I was never
 9 advised that my paperwork was not adequate.
 10 **Q** Well, this says -- it's a little
 11 different statement -- that you were never
 12 advised it was actually approved.
 13 A I was not notified if it had
 14 been approved or disapproved.
 15 **Q** Thank you. That answers my
 16 question. And did you appeal that
 17 decision?
 18 A Yes, because I did not agree
 19 with it.
 20 **Q** Was your unemployment
 21 compensation claim ultimately denied?
 22 A Yes.
 23

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1 (Defendant's Exhibit 13
 2 was marked for.
 3 identification)
 4 **Q** Looking at Exhibit 13, it
 5 appears that y'all were e-mailing back and
 6 forth about your return of the laptop to
 7 Miltope; is that correct?
 8 A Correct.
 9 **Q** And do you see there on November
 10 19th he said, "We need you to return the
 11 company laptop and provide passwords to CAV
 12 system ASAP"?
 13 A Right.
 14 **Q** So, at that point it was your
 15 position you had already conveyed those
 16 passwords to Lee?
 17 A Right.
 18 **Q** How long did it take you to
 19 return that laptop?
 20 A It was a while. I just -- you
 21 know, I had all my personal items in my
 22 cubical at work, and I had the laptop. It
 23 was a while. There's a record of that
 somewhere. I think I Fed-Exed it back to

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1 them or Derrick's office Fed-Exed it back
 2 to them.
 3 **Q** And that was after many requests
 4 that you return the laptop, correct?
 5 A To give you a little groundwork
 6 on this e-mail right quick, what started
 7 this e-mail was the gentleman that kept his
 8 boat at my house told me that Gabe had
 9 instructed him to let me know I needed to
 10 return that laptop. And that upset me
 11 quite a bit because I could have somebody
 12 sent down there as a messenger to tell me
 13 something, but I could not get anything
 14 from anybody else.
 15 **Q** Don't you recall getting that in
 16 a letter? Don't you recall that was in
 17 your letter from Ed Crowell to return the
 18 company laptop?
 19 A I don't -- it probably was. I
 20 don't deny that. You don't have to get
 21 it. I don't deny that.
 22 **Q** So, you knew as of the time you
 23 were terminated that you were supposed to

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1 **call him to arrange return of the laptop,**
2 **right, according to Exhibit 10?**

3 A Yeah. That's fine. But I
4 responded to Gabe with the first thing at
5 the bottom of the page, please direct all
6 communication directly to me. I've sent a
7 number of e-mails to Brian, no response,
8 with cc's to you and Mr. Crowell. You have
9 a way to contact me, please do so.

10 Q So, when you wrote that, you
11 were responding to someone being sent as a
12 messenger to tell you something?

13 A Exactly.

14 Q Was that John Reeves?

15 A Yes, it was.

16 Q And he told you to return the
17 laptop, and that upset you that he was
18 being sent to do that?

19 A Yes. I thought they could have
20 -- no one was answering my e-mails that I
21 had sent, but then he could send somebody
22 down there as a messenger to tell me
23 something.

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1 Q When Gabe e-mailed you on
2 November 11th, "You need to call me or
3 Brian ASAP," why didn't you call them?

4 A I had been e-mailing them.
5 Remember I told you that I didn't want to
6 --

7 Q Why didn't you just write him
8 back and say, "I'm not comfortable talking
9 to you on the phone. E-mail me your
10 questions and I'll respond"?

11 A I didn't think of that at that
12 time.

13 Q On Tuesday, November 11th, when
14 he said that to you, that was prior to you
15 getting your termination letter, correct?

16 A It was prior to me getting it.

17 Q Right. So, why would you be
18 afraid to talk to Gabe on the phone at that
19 point?

20 A I did not -- what was the --

21 Q Let's go back. At that point
22 you thought your leave was approved, right?

23 A Yes.

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1 Q You hadn't received a letter,
2 but you thought your leave was approved.
3 You also knew that if they needed you, they
4 could call you, right?

5 A Right.

6 Q So, when they e-mailed you, "You
7 need to call me or Brian ASAP," did it
8 occur to you that maybe they had been
9 having trouble reaching you and they needed
10 you to take the initiative to call them?

11 A But when did I get the e-mail?
12 When did I check my e-mail? I'm not sure.
13 There must be some reason that I didn't
14 respond to that. It may have been after
15 the fact. I don't recall.

16 Q According to -- just for the
17 record, it's what we produced as Bailey
18 versus Miltope Corp 00149. According to
19 that piece of paper, you were e-mailed on
20 November 11th. Do you have any reason to
21 think you didn't receive it?

22 A No. I'm asking what day did I
23 receive it.

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1 Q Well, I wouldn't know that.

2 A That's my question. I mean, it
3 was sent on the 11th because it says that.

4 Q Did you not check your e-mail
5 every day?

6 A I might not have checked it.
7 That's on a Tuesday.

8 Q According to your calendar, you
9 had returned from your Atlanta rehearsal
10 and you were tutoring Nicky and Josh that
11 day.

12 A That's possible.

13 Q So, wouldn't you have had time
14 to check your e-mail if that's all you were
15 doing that day?

16 A If I was teaching that day, I
17 was at home. So, I mean --

18 Q And you had your laptop there,
19 right?

20 A Well, I had a home computer.

21 Q And you could access your work
22 e-mail from your home computer, right?

23 A No.

(Pages 304 to 307)

25

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Page 306

1 Q Why didn't you just access it
2 off your laptop?

3 A I did.

4 Q In fact, that's what you had to
5 do to send all those e-mails you were
6 sending from home, right?

7 A No. I could send an e-mail from
8 home, but I could not access my work e-mail
9 from my home computer.

10 Q But you could access it from
11 your laptop?

12 A Right.

13 Q And you had your laptop
14 available to do that if you chose to?

15 A I had just gotten it. I wasn't
16 real good with that laptop because -- I
17 mean, I had gone on there and -- I went on
18 there and checked some of my e-mails and
19 that kind of thing.

20 Q Wasn't part of your job with
21 Miltope involving computer expertise to
22 manage the tracking and --

23 A Inventory.

1 2003 doing Rick and Bubba's Fast Fest at
2 Oak Mountain Amphitheater?

3 A What's that?

4 Q It's your e-mail. It says Rick
5 and Bubba's Fast Fest at Oak Mountain
6 Amphitheater. You wrote Derrick Welsh
7 about that. Do you remember?

8 A No, I didn't do that. There's
9 probably a lot more to it other than just
10 what you are reading. I have never done
11 anything with Rick and Bubba. It would be
12 cool, though.

13 Q The president says those guys
14 are dog-gone funny. I heard that on the
15 radio this morning. So, you don't recall
16 that?

17 A No. I have never done Rick and
18 Bubba. I don't have any idea. Read that
19 whole thing, and it will probably clear
20 that up.

21 Q Do you remember a man named
22 Danny Johnson asking you to help him get a
23 job at Miltope?

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1 Q So, you didn't --

2 A I'm not a technician. I was not
3 a technician.

4 Q Prior to November you had had
5 some absences from Miltope because of
6 rehearsals with the band, correct?

7 A There might have been one or
8 two.

9 Q According to one of your
10 e-mails, you had a rehearsal on October
11 13th, which was a Monday. Do you remember
12 that?

13 A I don't remember it, but yes,
14 that's possible.

15 Q And according to company
16 records, you took a vacation day that
17 Monday, the 13th.

18 A That's possible.

19 Q So, you don't have any reason to
20 dispute that you actually attended a
21 rehearsal that day?

22 A No, not at all.

23 Q Do you recall in early October

1 A Yes, I do.

2 Q Did you ever discuss with Mr.
3 Crowell Danny Johnson potentially being
4 employed there?

5 A I don't recall if I did or not.
6 I think I had mentioned that I had -- or
7 either to Brian that I had someone that --
8 I think Danny had gotten A Plus
9 certification for computers or something.
10 He had gone to school, and I had asked if
11 there were any openings and that kind of
12 thing. But I don't think anything ever
13 came out of that.

14 Q Do you remember attending a
15 rehearsal for the band the weekend of
16 September 5th?

17 A I think so.

18 Q According to your work schedule,
19 you took a sick day on that Friday, the
20 5th, and a vacation day that Monday, the
21 8th.

22 A (Witness nods head.)

23 Q So, that would have been so you

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1 could handle the rehearsal with the band?
 2 A Right.
 3 Q Earlier you testified that there
 4 was an e-mail where you said to Brian and
 5 Gabe, "If there's anything else you need,
 6 please let me know," right? Do you
 7 remember that testimony?
 8 A Yes. That was the e-mail around
 9 the time I told them that I had requested
 10 the doctor's letter. If there was anything
 11 else he needed, let me know.
 12 Q This is the e-mail I found
 13 (indicating). Is that the e-mail that you
 14 sent?
 15 MS. LINDSAY: For the record,
 16 that's Bates stamped 152.
 17 A Right, I sent that. Yes, I
 18 remember that.
 19 Q And that was the e-mail you were
 20 referring to about following up with them
 21 to find out if there was anything else they
 22 needed?
 23 A Yes.

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1 Q Was there any other
 2 communication between the 5th and the 14th?
 3 A I don't remember.
 4 Q And if there isn't a document
 5 that reflects that there was a
 6 communication, do you have any reason to
 7 believe that we are missing documents?
 8 A Between the 5th and the 14th
 9 there was communication. There was phone
 10 communication. You know, I told you on the
 11 7th that I was working with Lee. On the
 12 6th I was working with Lee. I was talking
 13 to people in Pennsylvania. But as far as
 14 is there an e-mail, I don't know.
 15 Q Let me ask a better question.
 16 What I was thinking about is in terms of
 17 you e-mailing Brian or Gabe about whether
 18 more documentation was needed. The only
 19 two e-mails I found are November 5th and
 20 November 14th.
 21 A Okay.
 22 Q So, would there be any other
 23 e-mails do you think that specifically

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1 address that to those people?
 2 A I don't know. I don't think so.
 3 MS. LINDSAY: I think I'm
 4 probably done, but I want to look at my
 5 notes. Do you want to take a brief lunch
 6 break?
 7 MR. BLYTHE: That's fine.
 8 (Lunch break was taken)
 9 Q Mr. Bailey, we are back on the
 10 record after lunch. Is there anything that
 11 you need to say to clarify any prior
 12 answers?
 13 A Not at this time.
 14 Q I was going to ask you why Tina
 15 Howell is not listed as one of your
 16 witnesses on your initial disclosures. Do
 17 you know?
 18 A I didn't think about it until in
 19 the middle of all this. She can be added,
 20 if you like.
 21 Q Are you going to -- do you want
 22 to call her to testify if there's a trial?
 23 A I guess, yes.

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1 Q Do you know if she still works
 2 at Miltope?
 3 A I don't think she does.
 4 Q Do you know how I can reach her?
 5 A I may have a phone number for
 6 her. If I don't, I can probably get one.
 7 Q Would you provide that to your
 8 lawyer so that can be shared with me?
 9 A Sure.
 10 Q Going back to your conversation
 11 with Dee -- which I understand there was
 12 just one. Am I right?
 13 A I believe so.
 14 Q If she says that she told you
 15 that your leave would have to be approved
 16 by Brian Burkhead and Ed Crowell, would you
 17 dispute that?
 18 A No, I wouldn't dispute it. I
 19 think when the conversation was had and she
 20 told me that I would qualify, it was
 21 probably more, "Well, if everything is as
 22 you say it is, you probably qualify," that
 23 kind of thing. It was not that she was

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1 saying you can be off as of -- what date do
2 you want to be off? It wasn't set in
3 stone. She said if everything -- let me
4 rephrase this. I think she was saying if
5 the conditions were as I had said, then I
6 would qualify.

7 **Q You understood that she did not
8 have the authority to authorize the leave
9 on her own, right?**

10 A I wouldn't think so.

11 **Q You didn't think she had that
12 authority?**

13 A Well, I didn't really even think
14 about that at the time.

15 **Q Would you look back at Exhibit
16 10? I wanted to call your attention to
17 where it says, "You may be considered to
18 have resigned without notice and removed
19 from the payroll." Do you see that part of
20 the letter?**

21 A Right.

22 **Q And then he states, "Your
23 actions meet this requirement of having**

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1 voluntarily resigned." Do you see that
2 part?

3 A Right.

4 **Q As I understood your testimony,
5 you considered this letter to fire you; is
6 that right?**

7 A Correct.

8 **Q But you understand and agree
9 with me, don't you, that this letter states
10 that according to Miltope, you voluntarily
11 resigned? Do you understand that?**

12 A I keep reading the first line.

13 **Q Okay. So, the word "terminated"
14 is what raises a red flag for you?**

15 A Yes. And there is no mention in
16 the second paragraph of please contact me
17 to make arrangements to clarify your need
18 for leave or the leave you have requested
19 or anything. It says to return the
20 company's laptop. It makes no effort to --
21 it didn't read very much like a request for
22 a clarification or anything. It reads as a
23 termination letter, because they want

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1 strictly the computer back and no other
2 communication.

3 **Q My question is --**

4 A I took this as a direct
5 termination letter.

6 **Q And do you understand that the
7 word "termination" could include an ending
8 of employment that is not because you are
9 fired? Let me ask a better question.**

10 **Do you understand that you,
11 yourself, can terminate your own employment
12 from a company?**

13 A I'm sure a person could.

14 **Q You've probably seen that in
15 handbooks before, that employment at-will
16 in Alabama means you can terminate or I can
17 terminate your employment with or without
18 cause at any time, right?**

19 A I'm not really up on that.

20 **Q Let me show you in the Miltope
21 handbook. It says in the last paragraph,
22 "Either the employee or Miltope may
23 terminate the employment relationship at**

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1 any time." Do you see that in the last
2 paragraph?

3 A Yeah, I see that.

4 **Q So, do you understand that to
5 mean that you would have the right to
6 terminate the relationship yourself?**

7 A I'm certain that that would
8 be -- according to that paragraph that that
9 would be the case.

10 (Defendant's Exhibit 14
11 was marked for
12 identification)

13 **Q Let me show you Defendant's
14 Exhibit 14. If you would, look at the
15 middle e-mail from you to Brian on November
16 17th. Do you see that?**

17 A Right.

18 **Q This appears to me to be your --
19 to be a follow-up e-mail after you received
20 your termination letter.**

21 A Right.

22 **Q And in response to that e-mail,
23 you were asked by John Reeves to return the
company laptop? Is that kind of the way**

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1 **you felt the events transpired?**
 2 A No. I think that would be --
 3 according to this other e-mail that I sent
 4 to Gabe on the 18th, if I responded to
 5 Brian on the 17th, that means that John
 6 would not have responded to me -- or John
 7 would not have told me that yet. Because
 8 it says --
 9 **Q Let me ask you a better**
 10 **question. After you sent this e-mail on**
 11 **November 17th, was that when John Reeves**
 12 **came to see you?**
 13 A What was the day of the week of
 14 November 17th?
 15 **Q According to your e-mail, it was**
 16 **a Monday.**
 17 A Okay. I see that now. Sorry.
 18 **Q That's okay.**
 19 A Maybe John did tell me -- maybe
 20 it was over the weekend that they came down
 21 for the boat or something and he told me
 22 that. That's possible.
 23 **Q I assume that no one responded**

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1 **to your questions that you asked in your**
 2 **November 17 e-mail. Is that correct?**
 3 A No.
 4 **Q I am correct?**
 5 A No one responded to me. Yes,
 6 you are correct.
 7 **Q No one answered these questions?**
 8 A I'm trying to follow that
 9 around.
 10 **Q Let me try to clean up the**
 11 **question. No one at Miltope answered the**
 12 **questions you raised in your November 17th**
 13 **e-mail, correct?**
 14 A Yes.
 15 **Q According to the chaplain notes**
 16 **about your dad the week before your**
 17 **September 5th rehearsal for the McQueen**
 18 **Street show, your dad was feeling hopeless**
 19 **and it suggested in the note that it had to**
 20 **do with you. Was your dad against you**
 21 **working with the McQueen Street band?**
 22 A No, ma'am.
 23 **Q Do you know why he would have**

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1 **been upset concerning you the week before**
 2 **you went to that rehearsal?**
 3 A I am an only child. My father
 4 has probably three things in his life that
 5 he loves and cares about. One would be me,
 6 one would be my daughter, and the other
 7 would be a hundred-pound black lab. And
 8 I'm sure that that's why he would be
 9 concerned about me.
 10 **Q So, you are saying he would be**
 11 **preoccupied with you regardless of what was**
 12 **going on with you?**
 13 A Probably.
 14 **Q Have you and your dad had any**
 15 **conflicts concerning your participation in**
 16 **the McQueen Street, Rat Race or Cold Hard**
 17 **Truth bands?**
 18 A No.
 19 MS. LINDSAY: Unless there are
 20 other documents that come into play -- I
 21 know we talked about this before. I don't
 22 think y'all have any other documents. But
 23 if some come to light, I would reserve the

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1 opportunity to ask about those. Otherwise,
 2 I think I'm done.
 3 EXAMINATION BY MR. BLYTHE:
 4 **Q I'll just start back when we**
 5 **were here the first time. There were a**
 6 **couple of things that needed clarifying.**
 7 **On the November 29th 2003**
 8 **McQueen Street, was that the 19th or the**
 9 **29th that that was to be played, do you**
 10 **recall?**
 11 A As I said when she asked before,
 12 I somehow thought it was the 19th, but I
 13 might have made a mistake. It was the
 14 29th.
 15 **Q And y'all played where and when?**
 16 A It was a place in Montgomery
 17 called Carrera's, and we played that
 18 Saturday. And it was from -- we had an
 19 itinerary which I'm sure is in these
 20 exhibits somewhere of every place we had to
 21 be that whole day.
 22 **Q Was that the fundraiser for the**
 23 **--**

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1 A No.

2 **Q When you played at all with any**

3 **of these bands, were they primarily local**

4 **or regional affairs? In other words, you**

5 **didn't have to go very far, such as Los**

6 **Angeles and --**

7 A No. In that aspect, they would

8 be local. Because the two McQueen Street

9 shows I've done, one was in Montgomery and

10 the other was in Prattville.

11 **Q Just let me be frank. Could you**

12 **support yourself by playing in a band**

13 **solely?**

14 A Solely?

15 **Q Yes. I mean you and your**

16 **family.**

17 A Not really.

18 **Q And back with the -- and I'm**

19 **just following up on a question that**

20 **Heather had asked you. Imposter, was it**

21 **ever a break-even proposition?**

22 A Never. It was a broke

23 proposition.

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1 **Q And you haven't made enough**

2 **money in the music industry to really**

3 **amount to anything, maybe to pay for a set**

4 **of drums here and there or something like**

5 **that?**

6 A Yeah. But that all falls back

7 into expenses and tools.

8 MS. LINDSAY: I feel like I

9 should object to the form of that one. To

10 really amount to anything is kind of harsh,

11 Derrick.

12 **Q Let me move on.**

13 A So now I know how you really

14 feel.

15 **Q Tell me just briefly what your**

16 **work history is with Miltope, just the**

17 **dates and times that you went to work, left**

18 **work and then came back to work.**

19 A The first time I was with

20 Miltope, I had -- sometimes I was on a

21 project and I would go in to work at 6:30

22 in the morning, and sometimes I wouldn't

23 leave until 7:00 o'clock at night. Things

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1 were different then. The situation was

2 different then.

3 **Q Let me interrupt you.**

4 A Please do.

5 **Q When did you go to work for**

6 **Miltope the very first time?**

7 A The year?

8 **Q Yes.**

9 A '96, I think.

10 **Q And when did you leave working**

11 **for them the very first time?**

12 A Either early '98 or late '97.

13 **Q And how long were you gone from**

14 **Miltope?**

15 A Three and a half years.

16 **Q And then you came back?**

17 A Right.

18 **Q What year did you come back?**

19 A 2001, I think.

20 **Q And then you finished with**

21 **Miltope I guess the date of the letter of**

22 **termination, correct?**

23 A Yes.

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1 **Q That's what I was wanting to get**

2 **to. There was some reference made earlier**

3 **in the deposition to a time sheet for the**

4 **week ending November 2nd 2003 and November**

5 **9th 2003, and I just wanted to clarify**

6 **this. Those are not your signatures on**

7 **these time sheets?**

8 A Right.

9 **Q On either one; is that correct?**

10 A Right.

11 **Q I just wanted to clarify that.**

12 **Those are actually, I believe --**

13 A Brian Burkhead signing my name.

14 **Q And he initialed beside it?**

15 A Right.

16 **Q He wasn't trying to conceal it.**

17 **Who is Darrell Cook, just briefly?**

18 A Darrell Cook is in the Miltope

19 information systems, MIS. I think he may

20 be the supervisor over MIS, but I'm not

21 exactly sure.

22 **Q Did you ever receive any**

23 **unemployment compensation after being**